

BOARD OF OPTOMETRY

Second Modified Text

Edit Key: Strikethrough Text indicates proposed deleted language as heard on 2/7/05.
Underline Text is proposed new language as heard on 2/7/05.
Italic Text is proposed new language after the hearing on 2/7/05.
Strikethrough Underline Text is proposed deleted language after the 2/7/05 hearing.
Bold Text is re-established existing language that was originally proposed to be deleted.
Bold Double Underline Text is proposed additional language after the first modified text.
Bold Strikethrough Text is language proposed to be deleted after first modified text.

Article 12.5. Citations and Fines

Amend section 1579 of Title 16 of the California Code of Regulations to read as follows:

1579. Citable Offenses.

(a) The executive officer of the board Board shall assess fines for citable offenses based on the classifications listed in this section, provided however, in no case shall the total fines exceed \$2,500 five thousand dollars (\$5,000) for each **violation investigation or inspection**. ~~The executive officer shall not impose any duplicate fines for the same violation.~~

~~B & P refers to the Business and Professions Code~~
~~CCR refers to the California Code of Regulations~~

~~The summary description in this section is for the convenience of reference only, does not include the complete text or all required elements of the listed Statute and regulations and shall be disregarded in determining the meaning and effect of this section.~~

(a) ~~The minimum and maximum fine for a violation of the following sections of the Business and Professions Code and California Code of Regulations shall be \$50 and \$500, respectively:~~

	<u>B&P</u>	<u>CCR</u>	<u>Summary Descriptions</u>	<u>Range of Fine</u>
(1)	3070	1505	Notification Address	50. - 500.
(2)	3075	1506	Display of Certificate	50. - 500.
(3)	3076		Temporary Practice	50. - 500.
(4)	3098		Misuse of Title or Letters	50. - 500.
(5)	3100		Employment of Cappers/Steerers	50. - 500.

(6)	3125	1513, False/Assumed Name	50. - 500.
		1518 & 1546	
(7)	3162	1549 Corporation Report/Renewals	50. - 500.
(8)	1565	Prescription Standards	50. - 500.
(9)	1566	Notice to Consumers	50. - 500.

(b) Where citations include an assessment of an administrative fine, they shall be classified according to the nature of the violation and shall indicate the classification on the face thereof as follows:

(1) Class "A" violations are violations which the executive officer has determined involve a person who has engaged in the practice of optometry without a **current license or and** valid license, including but not limited to, acting in the capacity of an optometrist or performing or controlling the practice of optometry as defined in Business and Professions Code section 3041.

A class "A" violation is subject to an administrative fine in an amount not less than ~~fifteen hundred~~ one thousand five hundred dollars (\$1,500) and not to exceed ~~twenty-five hundred~~ two thousand five hundred dollars (\$2,500) for each and every violation.

(2) Class "B" violations are violations which the executive officer has determined ~~that an optometrist has violated a provision of the Optometry Practice Act or a regulation adopted pursuant thereof which has caused financial harm but not physical harm to a person~~ involve either:

(A) A person who has violated a provision of Chapter 7 (commencing with section 3000) of Division 2 of the Business and Professions Code or a regulation adopted pursuant thereof that has caused non-physical harm to a person, or;

(B) A person who has committed a Class "C" violation and has one or more prior citations for Class "C" violations.

A class "B" violation is subject to an administrative fine in an amount not less than two-hundred and fifty dollars (\$250) and not exceeding ~~twenty-five hundred two thousand five hundred~~ dollars (\$2,500) for each and every violation.

(3) Class "C" violations are violations which the executive officer has determined involve a person who, ~~while engaged in the practice of optometry,~~ has ~~violated~~ committed a violation of a provision of Chapter 7 (commencing with section 3000) of Division 2 of the Business and Professions Code or a regulation adopted pursuant thereof ~~and which that~~ did not cause harm to another person.

A class "C" violation is subject to an administrative fine in an amount not less than two-hundred and fifty dollars (\$250) and not exceeding ~~twenty-five hundred two thousand five hundred~~ dollars (\$2,500) for each and every violation.

(c) Notwithstanding the administrative fine amounts specified in subsection (b), a citation may include a fine of ~~up to~~ between ~~two thousand five hundred and one~~ dollars (\$2,501) and ~~five thousand~~ dollars (\$5,000) if one or more of the following circumstances apply:

1. The citation involves a violation that has an immediate relationship to the health and safety of another person.
2. The cited person has a history of two or more prior citations of the same or similar violations.
3. The citation involves multiple violations that demonstrate a willful disregard of the law.
4. The citation involves a violation or violations perpetrated against a senior citizen or disabled person. ~~B & P refers to the Business and Professions Code.~~
5. The citation involves fraudulent billing submitted to an insurance company, or Medi-Cal or Medi-Care programs. **Such cases do not have to be fully adjudicated in order for the Board to issue a citation.**

(d) The sanctions authorized under this section shall be separate from, and in addition to, any other civil or criminal remedies.

NOTE: Authority cited: Sections 125.9, 148, and 3025, Business and Professions Code.
Reference: Section 125.9, Business and Professions Code.